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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.     |
|--|-------------|----------------------|---------------------|----------------------|
| 09/899,994   | 07/09/2001  | Masaharu Matsumoto   | 0074/010001         | 5174                 |
| 22893  | 7590        | 06/09/2005           | EXAMINER            |                      |
| SMITH PATENT OFFICE<br>1901 PENNSYLVANIA AVENUE N W<br>SUITE 200<br>WASHINGTON, DC 20006 |             |                      |                     | BATTAGLIA, MICHAEL V |
| ART UNIT   |             | PAPER NUMBER         |                     |                      |
|  |             |                      |                     | 2652                 |

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|   |   |   |
|---|---|---|
| <b>Advisory Action<br/>Before the Filing of an Appeal Brief</b> | <b>Application No.</b><br>09/899,994    | <b>Applicant(s)</b><br>MATSUMOTO ET AL. |
|   | <b>Examiner</b><br>Michael V. Battaglia | <b>Art Unit</b><br>2652                 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 27 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-19.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

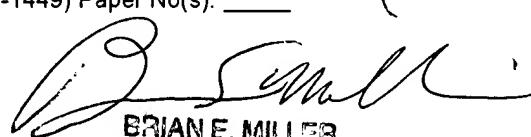
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached Response to Arguments.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.

13.  Other: \_\_\_\_\_.



BRIAN E. MILLER  
PRIMARY EXAMINER

Continuation of 3. NOTE: Proposed amendments add limitations to independent claims 1 and 12 that raise new issues requiring further consideration and/or search for claims 2,4-6,8,9,11,13 and 15-19.

*Response to Arguments*

1. Applicant's arguments filed May 27, 2005 with respect to claims 1 and 12 have been fully considered but they are not persuasive. Applicant argues on pages 15 and 16 that the FIR filter of Zhang would not be combined with the filter of Otomo because the frequency of Otomo is for digital audio for a DVD and the frequency of Zhang is for stereo signals in the FM band. However, both Otomo and Zhang perform two-time sampling speedup conversion (Col. 11, lines 44-48 of Otomo and Col. 4, lines 14-15 of Zhang). Zhang teaches that two-time sampling speedup conversion causes aliasing and suggests using a FIR filter to remove the aliasing components (Col. 4, lines 17-20). It would be obvious to use a Fir filter to remove aliasing components caused by the two-time sampling speedup conversion of Otomo and Zhang's use of a FIR filter that is optimized for the frequency used by Zhang does not preclude the teaching of Zhang from being used with a different frequency.

Applicant further argues on page 16 that the FIR filter of the present invention is 159 taps while the FIR filter of Zhang is 40 taps. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., 159 taps) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant then argues on page 16 features of a FIR filter that teach away from combining a FIR filter with Otomo. However, the features are not discussed by Otomo or Zhang and therefore have no bearing on the rejections over Otomo in view of Zhang.

2. Applicant's arguments filed May 27, 2005 with respect to claims 3 and 14 have been fully considered but they are not persuasive. Applicant argues on page 14 that Otomo does not disclose

that a processing period of filtering or a signal processing delay time in the filter corresponds to a predetermined processing unit of inputted audio data. Otomo operates on audio data (Fig. 9). At any given time during which the filter is operating, the filter is inherently processing a finite amount of inputted audio data. The claimed “predetermined processing unit of inputted audio data” reads on the finite amount of inputted audio data on which the filter is processing at a given time during filter is operation. The filter inherently has a nonzero processing delay time or processing period to process the predetermined processing unit (i.e. time is inherently required for the filter to process the inputted audio data). The claimed “processing delay time in said filter” and “processing period in said step of filtering” read on the nonzero processing delay time or processing period. The processing delay time in said filter and processing period in said step of filtering correspond to a predetermined unit of inputted audio data because the processing delay time or processing period is the amount of time that the filter takes to process the predetermined processing unit of inputted audio data. It is noted that the manner in which the delay time and the predetermined unit correspond is not claimed. Therefore, any manner of correspondence would meet the claim limitation.

Applicant further argues on pages 14-15 that Otomo does not disclose the way to select processing within the decoder corresponding to the delay time of the re-sampling filter. However, “a way to select processing” corresponding to the delay time is not claimed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Battaglia whose telephone number is (571) 272-7568. The examiner can normally be reached on 5-4/9 Plan with 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa T. Nguyen can be reached on (571) 272-7579. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Battaglia



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PRIMARY EXAMINER